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3A ENTERTAINMENT LTD. and LABCROFT LTD.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 3A ENTERTAINMENT LTD. and LABCROFT
LTD.,

13 Plaintiffs,

14 v.

15 CONSTANT ENTERTAINMENT, INC. and
16 PHILIP HO,

17 Defendants.
18

Case No. CV 08-1274 JW

**NOTICE OF MOTION AND
MOTION FOR EXPEDITED
DISCOVERY; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Date: September 22, 2008
Time: 9:00 AM
Courtroom 8, Fourth Floor

Date action filed: March 4, 2008

19 **NOTICE OF MOTION AND MOTION**
20

21 PLEASE TAKE NOTICE that as soon as the matter may be heard in the above-referenced
22 Court, located at 280 South 1st Street, San Jose, CA 95113, Plaintiffs 3A Entertainment, Ltd. and
23 Labcrott, Ltd. will and hereby move the Court for an order permitting discovery to commence
24 immediately. Plaintiffs make this motion on the grounds that an order granting expedited
25 discovery is necessary to allow them to obtain information regarding Defendants' financial
26 condition, which will support Plaintiffs' request for default judgment.
27
28

1 This motion is based on this notice of motion and motion, memorandum of points and
 2 authorities, and the pleadings and papers on file herein, and such other argument and evidence as
 3 may be presented to the Court at a hearing on the motion.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **INTRODUCTION**

6 Plaintiffs 3A Entertainment Ltd. and Labcroft Ltd. brought this action seeking damages
 7 they incurred as a result of Constant Entertainment, Inc.'s ("Constant") breach of numerous
 8 contracts, as well as misrepresentations made by it and its President Philip Ho regarding
 9 Constant's ownership of rights to certain software games that were the subject of those contracts.

10 Plaintiffs filed their complaint on March 4, 2008. Both Constant and Ho were served on
 11 March 12, 2008. Neither Constant nor Ho have answered or otherwise pled in response to the
 12 complaint. The Clerk accordingly entered both defendants' default on April 22, 2008.

13 Plaintiffs now seek an order allowing discovery to commence immediately, so that
 14 Plaintiffs may obtain information regarding Defendants' financial condition, which will facilitate
 15 Plaintiffs' request for a default judgment.

16 **ARGUMENT**

17 Because Defendants have defaulted, they have no right to appear in this action and cannot
 18 participate in a Federal Rule of Civil Procedure 26(f) conference. Accordingly, there is presently
 19 a formal stay on discovery pursuant to Federal Rule of Civil Procedure 26(d). *See* Fed. R. Civ. P.
 20 26(d) (prohibiting discovery "from any source before the parties have conferred as required by
 21 Rule 26(f)"). Thus, without an order from this Court allowing discovery, Plaintiffs have no
 22 avenue for seeking discovery regarding Defendants' financial condition, which will support their
 23 request for punitive damages as part of a default judgment. An order permitting discovery to
 24 commence immediately will allow Plaintiffs to obtain this information and facilitate the speedy
 25 resolution of this case. Allowing expedited discovery is thus warranted here. *See Blazek v.*
 26 *Capital Recovery Assocs.*, 222 F.R.D. 360, 360 (E.D. Wis. 2004) (court authorized plaintiff to
 27 engage in discovery of defendant under Rule 26(d) when defendant had defaulted).
 28

1 Plaintiffs believe that a hearing on this motion is unnecessary. Because Defendants have
2 defaulted, they cannot file an opposition to this motion or appear at any hearing. Thus, Plaintiffs
3 believe that this motion can be resolved on their submission alone.

4 **CONCLUSION**

5 For the foregoing reasons, Plaintiffs should be allowed to take discovery of Defendants
6 immediately.

7 Dated: June 23, 2008

PHILIP T. BESIROF
ALEXEI KLESTOFF
MORRISON & FOERSTER LLP

9 By: /s/ Alexei Klestoff
Alexei Klestoff

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11 Attorneys for Plaintiffs
12 3A ENTERTAINMENT LTD. and
13 LABCROFT LTD.
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